

**Governor's Commission to Reform Maryland's Pretrial System
Individual Rights and Collateral Consequences Subcommittee**

**Tuesday, August 19, 2014
10:00 AM – 12:00 PM**

**House Office Building
6 Bladen St.
Annapolis, Maryland 21401**

Participating Subcommittee Members:

Paul DeWolfe

Toni Holness

Delegate Peña-Melnyk

Michael Schatzow

Reverend Todd Yearly (Co-Chair)

Staff:

Lisa Smith, Governor's Office of Crime Control & Prevention

Alex Staropoli, Governor's Office of Crime Control & Prevention

Guests:

Douglas Colbert, University of Maryland School of Law

Courtney Glass, Office of the Prince George's County Executive

Kevin Loeb, Department of Public Safety and Correctional Services

Karen Morgan, Department of Legislative Services

Suzanne Pelz, Maryland Judiciary

Rachel Sessa, Department of Public Safety and Correctional Services

Drew Snyder, Maryland Judiciary

I. Welcome and Introductions

Rev. Yearly called the meeting to order at 10:13AM. After everyone in the room introduced themselves, Rev. Yearly briefly went through the agenda for the meeting.

II. Purpose of Subcommittee and Discussion

Rev. Yearly read the purpose of the subcommittee to the group:

The purpose of this subcommittee is to ensure that all individuals in Maryland who come into contact with the criminal justice system receive fair and equal treatment throughout the pretrial process. This subcommittee will identify disparities and propose potential solutions.

Rev. Yeary then called for an open discussion among the group about disparities in the system and potential solutions.

Michael Schatzow raised concerns about the present system, and specifically about the waiver and continuity of counsel. Although there has been a good response from the bar to serve as panel attorneys, Mr. Schatzow is concerned about the number of people waiving counsel as well as how the rules have been constructed to prevent any continuity of counsel between the Initial Appearance and Bail Review stages. Mr. Schatzow questions whether this setup is constitutional. He believes there is a very basic problem if a public defender is not able to obtain information from his/her client's initial appearance because there is no continuity between OPD and the panel attorneys. Why wouldn't we want the same attorney handling a defendant's case from start to finish? It seems as though waiving counsel is more common in the larger counties and Baltimore City.

Paul DeWolfe said that he agrees with Mr. Schatzow. If people were to design a criminal justice system, this is the last system they would design. Mr. DeWolfe believes there is a built in conflict of interest by having the Judiciary recruit, train, and appoint panel attorneys. Mr. DeWolfe believes that this is a system that can be fixed, despite the many competing interests. Mr. DeWolfe stated that the 2013 Task Force recommendations represent bail reform. The individual rights aspect of bail reform is that if you have money, you can get out of jail. If you don't have money, you stay in jail. That is what Richmond is all about. This subcommittee must identify who the system is detaining. Mr. DeWolfe believes a solution is to expand pretrial supervision and services statewide. Money bail should be abolished. Mr. DeWolfe does not think this subcommittee needs to reinvent the wheel. The 2013 Task Force heard from experts and came up with sound recommendations that can be implemented in a fiscally responsible way. The state should not lose this opportunity to implement meaningful pretrial reform.

Delegate Peña-Melnyk stated that this is like déjà-vu. During the legislative session the pretrial workgroup spent many hours listening to experts talk about pretrial. The Delegate stated that she believes that monetary bail is the problem. She stated that the final subcommittee recommendations must not only address policy reform, but must also acknowledge the political reality of pretrial policy reform.

Toni Holness stated that the group must identify how this subcommittee/commission is different than the previous task force. She stated that she is concerned with pretrial bias towards poor people and people of color.

Kevin Loeb stated that when talking about individual rights and collateral consequences within the current system, volume of defendants is an issue. Under the current system people are sitting and waiting. There is a concern about the length of detention, speedy trial rights, the detention of poor people and people of color. As a result of being detained people lose their jobs and are away from their families. The state also spends thousands of dollars in operating costs to hold these people. It costs approximately \$150/day to hold someone in jail.

Mr. DeWolfe mentioned an article in the Baltimore Sun about the Juvenile Detention Alternatives Initiative and how successful that effort was because it was done collaboratively. He stated that the juvenile justice system has been using risk assessments for years. He said that judges are doing a good job

but they're tied to money bail which has a detrimental impact on poor communities. Mr. DeWolfe said that we should look to the juvenile justice system to see how it reformed itself.

Kevin Loeb stated that additional funding would provide additional options for judges to use pretrial supervision instead of detention. If judges had more information about supervision and felt confident in agents ability to monitor defendants pretrial, they would use pretrial supervision as an option. Most people do not need intense supervision pretrial, and it may require as little as a phone-call check in or text message reminder about a court date.

Rev. Yearly asked Mr. Loeb if DPSCS has determined how much it would cost to expand pretrial supervision? Mr. Loeb stated that unfortunately because we do not currently use a tool at the beginning stages of pretrial, DPSCS is limited in what it can predict. We all know that there will be costs, but we also need to determine where we would want to spend the money, on supervision, services, or both? Some research says that for a robust pretrial services unit, the budget is about 1/3 of what an agency spends on parole and probation.

Rev. Yearly suggests that the subcommittee start with the recommendations from the previous task force and expand on them. The subcommittee will need to have some idea that can drive the political agenda of stakeholders to get them engaged.

Delegate Peña-Melnyk thinks that this legislative session will provide a good opportunity to get something passed since there are many new people in the General Assembly and in particular on the Judiciary Committee in the House. The Delegate also noted that it will be important for everyone to also consider other options such as expanding citations which almost passed last year.

Professor Doug Colbert commented that he agrees with everything that was said. He believes that this is a political issue and that the masses need to be mobilized to fix the issue. He believes that this subcommittee must write the strongest report possible to offset other criticisms about reforming the system. He stated that few people are concerned with individual rights and the community needs to be educated about the race and class issues in the system. Prof. Colbert stated that the Task Force recommendations from last year were sound and supported by all. Prof. Colbert raised concerns about the current process. He is concerned about the training and supervision of panel attorneys. He said that there is a group of 100 or so panel attorneys who are getting training at the University Of Maryland School Of Law voluntarily. He says this type of program should be expanded to all panel attorneys. Prof. Colbert is also concerned about the number of offenders waiving counsel. Prof. Colbert stated that anecdotally, he has heard that approximately 80% are waiving in Baltimore County and that 4 out of 5 are waiving in Howard County. 40-50% are waiving in Baltimore City. In Frederick County, one attorney told him that 8 out of 8 defendants waived counsel on his/her shift. It seems to be reoffenders who are waiving.

Paul DeWolfe noted that on a tour of Prince George's Correctional Facility, the wait time has gone from 4 hours to 17 hours for an initial appearance. Defendants, on average, are sitting in a chair for 17 hours waiting to see a court commissioner. There are two presentments essentially. The first is to advise them of their rights and to determine indigence eligibility for counsel. The second is the initial appearance.

In DC, defendants see the lawyer while they are waiting to go before judicial officer. People are concerned that the process itself is coercing people to waive counsel. The process is being run in a way that raises constitutionality concerns.

Prof. Colbert stated that when he served as a panel attorney he was told that he could not speak to anyone until it was determined that they were eligible for counsel. Out of 7 defendants, only 2 chose to accept counsel. One of the individuals he represented had a bond set at \$15K. After bond was set, the defendant became visibly upset. Prof. Colbert asked if he could go back and talk to the client. He was told that his representation had ended.

Delegate Peña-Melnik suggested that the subcommittee request that she ask the Attorney General's office for an opinion about the panel attorneys rule interpretation. There is also a concern that there are a lot of long wait times specifically for those with Latino-sounding names. This raises questions about ICE issues and how long it takes to get interpreters for the initial appearances.

People are concerned about the issue of attorneys not having access to clients prior to presentment and after the initial appearances. The main issue is determining qualification for an attorney. The two-step process is creating a bottleneck and slowing down the system. The subcommittee must clarify the challenges with implementation so that they are documented and an informed recommendation can be made. The subcommittee would like waivers to be collected by race, gender, and offense type.

Rev. Yeary stated that the subcommittee must be mindful of questions on the risk assessment tool that are not connected to likelihood to appear, ie. how many times have you moved? Most defendants come from poverty, and if you look at residency, employment, etc., the results of the tool may be skewed thereby causing a high bail to be set, perpetuating the cycle. Because many defendants cannot afford to make bail, by the time the defendants get to the judge, they are often sentenced with time served. It is important that this subcommittee look at the questions that are being asked by the instrument chosen by the other subcommittee to ensure that individual rights are protected.

This subcommittee will review the 2013 Task Force recommendations as a starting point and will determine whether it has edits or additions to contribute to the recommendations. The subcommittee will also develop a list of administrative recommendations, legislative/political recommendations, and recommendations that are specific to a risk assessment tool. The subcommittee has already identified the following concerns:

1. Waiver of counsel – people are concerned about whether or not the process itself is coercive.
2. Appointment and Continuity of Counsel – where does representation begin, where does representation end/terminate? How are attorneys trained/prepped for representation? How are they supervised? How are they chosen, is it merit-based system?
3. Conflict w/ Judiciary Appointing and Training Attorneys – should the judiciary be in a position to affect the financial outcome of those lawyers who represent people in front of them? How do other states assign counsel?

Mr. DeWolfe and Delegate Peña-Melnyk asked about piloting a risk assessment tool. Lisa Smith stated that there are data gaps that are currently creating challenges with piloting a tool. The main issue is that we do not have statewide FTA data.

The subcommittee must also determine how it wants to define fundamental individual rights. It must determine the disparities within the system as well as identify what the collateral consequences are of being in the system. Rev. Yeary cautioned that freedom should not be a cost-effective proposal. Although cost effectiveness is important, it must not be the priority.

Rev. Yeary suggested that each member of the subcommittee write a summary of the areas raised in the meeting. Everyone should send their summaries to Alex so that she can start compiling them. The summaries will serve as the beginning of the subcommittee's recommendations to the larger Commission.

The next meeting is scheduled for September 10, 2014 from 1-3PM in Room 145 of the House Office Building in Annapolis.

The next full Commission meeting is scheduled for September 22, 2014 from 1-4PM at the Judiciary Education and Conference Center.

The meeting adjourned at 12:04PM.